Supreme Court, U.S.
FILED

021302 MAR 4 2003

No. 02-

IN THE

Supreme Court of the United States

BOARD OF EDUCATION OF THE
TOWNSHIP OF BRANCHBURG,

Petitioner,

v.

BOARD OF EDUCATION OF THE BOROUGH OF
SOMERVILLE; VITO A. GAGLIARDI;
DAVID LIVINGSTON,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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83 pp

QUESTION PRESENTED

Whether parents required by state law to send their children to schools in a neighboring school district are entitled to proportional representation on the neighboring school district's board of education under the "one person, one vote" principle of the Fourteenth Amendment.

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INTRODUCTION

Since first setting forth the "one person, one vote" principle in *Baker v. Carr*, 369 U.S. 186 (1962), this Court has applied that doctrine in a number of different contexts, ranging from the election of state legislators, *see Reynolds v. Sims*, 377 U.S. 533 (1964), to that of county officials, *see Avery v. Midland County*, 390 U.S. 474 (1968), to that of members of a local school board, *see Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621 (1969), to that of trustees of a community college, *see Hadley v. Junior Coll. Dist. of Metro. Kansas City*, 397 U.S. 50 (1970). This case presents a vital question under that doctrine: whether, when residents of a school district are required by state law to send their children to schools in a neighboring district, and are effectively required to pay a portion of their property taxes to that neighboring district, they are entitled to proportional representation on the school board of that district.

In this case, the Third Circuit held that they are not. The Third Circuit's decision turns on the interpretation of *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60 (1978), this Court's most recent pronouncement on the circumstances under which the extraterritorial exercise of authority by a governmental body violates the "one person, one vote" principle. This question is of extreme importance to the residents of the State of New Jersey, where school districts routinely send their students to schools in neighboring districts, and where students from the "sending" school district sometimes even outnumber those from the "receiving" district. This Court should grant *certiorari* to resolve the ambiguity in *Holt* and to ensure the consistent application of the principle of proportional representation.

OPINIONS BELOW

The Third Circuit's opinion is reported at 312 F.3d 614 and reprinted in the Appendix ("App.") at 1a-25a. The district court's unpublished opinion is reprinted at App. 45a-53a.

STATEMENT OF JURISDICTION

The Third Circuit entered judgment on December 4, 2002. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment to the United States Constitution states in pertinent part as follows:

> No State shall * * * deny to any person within its jurisdiction the equal protection of the laws.

N.J. Stat. Ann. § 18A:38-8.2 states in pertinent part as follows:

> A school district which is sending pupils to another school district pursuant to N.J.S.A. 18A:38-8 shall have representation on the board of education of the receiving school district as follows:
>
> > (a)(1) If the pupils of the sending district comprise less than 10 percent of the total enrollment of the pupils in the grades of the receiving district in

which the pupils of the sending district will be enrolled, the sending district shall have no representation on the receiving district board of education.

(2) If the pupils of the sending district comprise at least 10 percent of the total enrollment of the pupils in the grades of the receiving district in which the pupils of the sending district will be enrolled, the sending district shall have one representative on the receiving district board of education.

STATEMENT OF THE CASE

1. Under New Jersey law, a public school district may fulfill its obligation to educate its students in one of three ways. *First*, the school district may build and maintain its own schools. *Second*, the school district may join with another district to form a "regional" school district. *See* N.J. Stat. Ann. § 18A:13-2 (1999). *Third*, the school district may enter into a "send-receive" relationship with another school district, whereby it "sends" its pupils to the "receiving" district's schools. *See* N.J. Stat. Ann. § 18A:38-8 (1999). The sending district is required to make a tuition payment to the receiving district for each pupil it sends. *See* N.J. Stat. Ann. § 18A:38-19 (1999).

Branchburg and Somerville are non-contiguous communities in Somerset County, New Jersey. *See* App. 11a. In 1956, petitioner Board of Education of the Township of Branchburg entered into a send-receive relationship with respondent Board of Education of the Borough of Somerville, for the purpose of sending its students to

Somerville High School. *See id.* When Branchburg entered into the relationship, it was a much smaller town than Somerville; as Branchburg grew in population, however, it sought to have a more meaningful voice in the education of its children. *See id.* at 11a-12a. Since 1970, Branchburg residents have fought unsuccessfully either to terminate or to alter the send-receive relationship with Somerville. *See id.* at 13a-15a.

New Jersey law provides that a send-receive relationship may be modified only if: (1) the sending district obtains the permission of the New Jersey Commissioner of Education to terminate the relationship; (2) the two districts agree to form a regional school district; or (3) the two districts agree to form a limited-purpose regional school district. *See* N.J. Stat. Ann. §§ 18A:38-13, 18A:38-21.1 (1999). Branchburg has repeatedly pursued all three statutory options, without success. *First*, in 1975, Branchburg petitioned the Commissioner of Education to withdraw from the send-receive relationship with Somerville. *See* App. 14a. The Commissioner denied the petition, however, and his denial was affirmed both by the State Board of Education and by the Appellate Division of the New Jersey Superior Court. *See Bd. of Educ. of Branchburg Twp. v. Bd. of Educ. of Somerville*, 414 A.2d 259, 263 (N.J. Super. App. Div. 1980) (noting that severance would create a racially non-diverse school in Branchburg and increase costs for both districts). *Second*, in 1996, Branchburg and Somerville conducted a feasibility study for a combined regional school district. *See* App. 15a. The experts retained for the study concluded, however, that the disadvantages of a regional school district outweighed the advantages. *See id.* at 14a. *Third*, in 1999, Branchburg conducted a feasibility study for a "limited purpose" regional school district. *See id.* Again, however,

the experts recommended against a regional school district. *See id.* Importantly, the Somerville Board has consistently opposed the formation of a regional school district with Branchburg. *See* C.A. App. 72a; *Somerville, Branchburg Need Accord*, Courier News (Bridgewater, N.J.), (Jan. 26, 2001, at A-13 (noting that "Somerville school officials have tried hard — very hard — to keep Branchburg under Somerville's thumb"); Michael Deak, *Somerville Won't Attend Regionalization Meeting*, Somerset Messenger-Gazette, Feb. 3, 2000, at A-1.

Since the formation of the send-receive relationship, Branchburg has grown dramatically. *See* App. 12a. As of the 2000 census, Branchburg is actually larger than Somerville, with 14,566 residents to Somerville's 12,423. *See id.* Branchburg students now constitute about 53% of the enrollment at Somerville High School; in the 1999-2000 school year, there were 428 Branchburg students attending Somerville High School, and only 377 Somerville students. *See id.* In the 2000-01 school year, Branchburg residents were projected to pay more than $4.8 million in property taxes to the Somerville Board to cover the education costs for Branchburg students at Somerville High School. *See id.*

Despite the fact that Branchburg students constitute a majority of the students at Somerville High School and Branchburg residents provide a substantial amount of the funding for the school, Branchburg residents have only limited representation on the Somerville Board. *See id.* From 1956 to 1995, Branchburg residents had no representation at all on the Somerville Board. *See, e.g.*, N.J. Stat. Ann. § 18:14-6 (1940). In 1996, the New Jersey Legislature amended the send-receive statute, recognizing for the first time that residents of a sending district should have at least some representation on the school

board of the receiving district. As amended, the statute allows a sending district to have a single representative on the board of the receiving district if pupils from the sending district constitute at least 10% of the students in the relevant grades of the receiving district. *See* N.J. Stat. Ann. § 18A:38-8.2(a) (1999). That representative is eligible to vote only on certain issues affecting the schools attended by students from the sending district, including capital spending and teacher dismissals. *See* N.J. Stat. Ann. § 18A:38-8.1 (1999). In Branchburg's case, the net result is that Branchburg has only one representative on the 10-member Somerville Board on some issues, and no representative at all on others. *See* App. 48a-49a.

2. Petitioner Branchburg Board and four Branchburg residents brought suit in federal court, claiming that the provision of the New Jersey send-receive statute allowing them only limited representation violated the "one person, one vote" principle of the Fourteenth Amendment. *See id.* at 15a. The district court granted plaintiffs' motion for summary judgment. *See id.* at 45a–53a. It found that, while Branchburg's citizens do not live within the Somerville school district, the "one person, one vote" principle never-theless applies because the Somerville Board has much more than an "limited" or "indirect extraterritorial effect" on Branchburg's citizens. *Id.* at 50a-51a. Specifically, the district court noted that the decisions of the Somerville Board "*directly* impact the future of Branchburg's children and the money flowing from Branchburg to Somerville," *id.* at 51a; that "Branchburg's citizens have a substantial interest in the high school education of their children," *id.* at 50a; and that "Branchburg and Somerville citizens both have an identical interest in the education provided" at the high school, *id.* at 51a. Because the New Jersey statute failed to provide proportional representation, the district court

concluded, it was unconstitutional as applied to Branchburg. *See id.* at 52a.

The Third Circuit reversed. *See id.* at 1a-25a. Relying on an earlier Third Circuit decision, the court of appeals held that strict scrutiny would apply to the exclusion of non-residents from the election of a particular governmental entity only when that entity "exercises a level of control over the non-residents' lives close to or equal to that which it exercises over those who actually reside within its borders." *Id.* at 20a (internal quotation omitted). The court found that, because the Somerville Board exercises authority over Branchburg residents only with regard to high school, rather than all grades, the powers exercised by the Somerville Board were not "co-extensive" with respect to Somerville and Branchburg residents, and strict scrutiny was therefore not warranted. *See id.* at 21a. The court applied the reasoning of its earlier decision even though that case involved a sending school district, unlike Branchburg, which had not attempted to terminate its send-receive relationship. *See id.* at 22a. The court proceeded to uphold the statute under rational basis review. *See id.* at 23a.

REASON FOR GRANTING THE PETITION

THE COURT OF APPEALS ERRED BY HOLDING THAT RESIDENTS WERE NOT ENTITLED TO PROPORTIONAL REPRESENTATION ON A SCHOOL BOARD TO WHICH THEY ARE REQUIRED TO SEND THEIR CHILDREN.

This Court should grant *certiorari* because the decision below is in tension with this Court's prior decision in *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60 (1978), and because the petition presents a recurring question of exceptional importance, *see* S. Ct. R. 10.

A. The Decision Below Is In Tension With This Court's Decision In *Holt*.

The pathsetting decision in this area is *Holt*, in which this Court considered the circumstances under which the extraterritorial exercise of authority by a governmental body violates the "one person, one vote" principle. The Third Circuit's decision is at a minimum inconsistent with this Court's decision in *Holt*, and *certiorari* is therefore warranted.

1. In *Holt*, residents of an unincorporated Alabama community brought suit against the City of Tuscaloosa, challenging their exclusion from Tuscaloosa city elections. 439 U.S. at 62-63. Although the residents lived outside the city boundaries, they were nevertheless subject to a number of the city's regulations, most notably its police and sanitary regulations. *See id.* at 61-62.

The Court rejected the plaintiffs' challenge. Writing for the Court, then-Justice Rehnquist reasoned that the plaintiffs' claim, while "not without some logical appeal," *id.* at 70, ultimately failed because the city was exercising only "limited municipal powers" over residents within their police jurisdiction, *id.* The Court reasoned that the Alabama statute giving extraterritorial force to certain municipal powers bore a rational relationship to a legitimate state purpose, and was therefore constitutional. *See id.* at 70-75.

In upholding the Alabama statute, the Court noted that "several States grant their cities more extensive or intrusive powers over bordering areas than those granted under the Alabama statutes," *id.* at 72, and added that it "[did] not mean to imply that every one of [those statutes] would pass constitutional muster," *id.* at 72 n.8. Similarly, in his concurring

opinion, Justice Stevens emphasized that "this holding does not make all exercises of extraterritorial authority by a municipality immune from attack under the Equal Protection Clause of the Fourteenth Amendment." *Id.* at 76.

Specifically, the Court expressly distinguished two factual patterns from the one at issue in *Holt*. *First*, the Court noted that *Holt* did not involve "a situation in which a city has annexed outlying territory in all but name, and is exercising precisely the same governmental powers over residents of surrounding unincorporated territory as it does over those residing within its corporate limits." *Id.* at 72 n.8 (citing *Little Thunder v. South Dakota*, 518 F.2d 1253 (8th Cir. 1975)). *Second*, the Court noted that *Holt* did not present a situation in which non-residents were subject to such "important aspects of state powers as [the] authority to levy and collect * * * income, gasoline, sales, and use taxes," and "were just as interested in and connected with electoral decisions as * * * their neighbors." *Id.* (quoting *Evans v. Cornman*, 398 U.S. 419, 423 (1970)) (internal quotation marks omitted). As to the latter, the Court cited the "vital and traditional authorities of cities and towns to levy ad valorem taxes, invoke the power of eminent domain, and zone property for various types of uses." *Id.*

2. *Holt* therefore suggests that, where a governmental body exercises the same degree of power over residents or non-residents, *or* where a governmental body subjects non-residents to "important aspects of state powers," a state statute providing non-residents with insufficient representation is subject to strict scrutiny. The Third Circuit, however, employed a much different test, holding that strict scrutiny applies only when a governmental body "exercises a level of control over the non-residents' lives close to or equal to that

which it exercises over those who actually reside within its borders." App. 20a (internal quotation omitted).[1] Because the Somerville Board "only exercises authority over Branchburg residents * * * with regard to the Somerville High School," and because "Branchburg is free to control the education of its children from K-8," the court reasoned that the powers of the Somerville Board were not "co-extensive" with regard to both Somerville and Branchburg residents, and thus applied rational basis scrutiny. *Id.* at 20a-21a. In so holding, the Third Circuit effectively ignored the second situation under which *Holt* seemed to recognize that strict scrutiny sould apply: namely, a situation in which a governmental body subjects non-residents to "important aspects of state powers."

a. At the outset, it cannot be questioned that the authority of localities over education is an "important aspect of state power." This Court has frequently stressed the significance of state power over education. In *Brown v. Board of Education* itself, the Court recognized that public education "is perhaps the most important function of state and local governments." 347 U.S. 483, 493 (1954); *see also Zelman v. Simmons-Harris*, 122 S. Ct. 2460, 2480 (2002) (Thomas, J., concurring) (same). Elsewhere, the Court has noted that education "fulfills a most fundamental obligation of government to its constituency," *Ambach v. Norwick*, 441 U.S. 68, 76 (1979) (internal quotation omitted), and that it is a "most vital civic institution for the preservation of a democratic system of government," *Plyler v. Doe*, 457 U.S. 202, 221 (1982) (internal quotation omitted).

1. The Sixth Circuit has gone even further than the Third Circuit and, relying on *Holt*, has stated without qualification that rational basis review applies to *any* extraterritorial exercise of authority by a governmental body. *See Mixon v. Ohio*, 193 F.3d 389, 405 (6th Cir. 1999); *Duncan v. Coffee Cty.*, 69 F.3d 88, 94 (6th Cir. 1995).

Accordingly, the Court's treatment of education in the "one person, one vote" context "reflect[s] the Court's judgment as to the unique importance of education among the functions of modern local government." *Ball v. James*, 451 U.S. 355, 372 n.1 (1981) (Powell, J., concurring). In at least two cases, this Court has held that the "one person, one vote" principle is fully applicable to education-board elections, *see Hadley v. Junior Coll. Dist. of Metro. Kansas City*, 397 U.S. 50 (1970); *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621 (1960), and that such elections must therefore be held on a "strictly majoritarian basis," *Ball*, 451 U.S. at 372 n.1 (Powell, J., concurring). In so holding, the Court has relied heavily on the fact that "[e]ducation has traditionally been a vital governmental function." *Hadley*, 397 U.S. at 56. Indeed, lower courts have applied the "one person, one vote" principle to the "limited purpose regional" school districts authorized under New Jersey law, which, like many send-receive relationships, govern only high school education. *See Township of Marlboro v. Board of Educ. of the Freehold Reg. High Sch.*, 992 F. Supp. 756 (D.N.J. 1998); *Franklin Twp. v. Board of Educ. N. Hunterdon Reg. High Sch.*, 74 N.J. 345 (1977).

Unsurprisingly, therefore, this Court has indicated that education is one of the "vital and traditional" governmental powers that triggers strict scrutiny for purposes of the "one person, one vote" doctrine. In *Ball v. James*, the Court declined to apply strict scrutiny to a restriction on voting in an election for directors of an agricultural improvement and power district, reasoning that "the District simply does not exercise the sort of governmental powers that invoke the strict demands" of the "one person, one vote" principle. 451 U.S. at 366. In creating an exception for such "special-purpose district" elections, the Court noted that the district at issue

"cannot enact any laws governing the conduct of citizens, nor does it administer such normal functions of government as * * * *the operation of schools*." *Id.* (emphasis added). In *Evans*, the Court held that residents of a federal enclave were entitled to vote in state elections, *inter alia*, because they sent their children to the State's public schools. *See* 398 U.S. at 424. And in *Holt* itself, Justice Stevens, in his concurring opinion, expressly included the "operation of schools" in his list of important powers not exercised by Tuscaloosa. 439 U.S. at 76.

b. Nor can it be questioned that the authority of localities over taxation is also an "important aspect of state power." As we have already seen, in *Holt* itself, this Court distinguished between the exercise of limited municipal powers by the City of Tuscaloosa and the exercise of the "vital and traditional authorit[y]" to "levy ad valorem taxes." *Id.* at 72 n.8. And in *Ball*, the Court noted that the agricultural improvement and power district lacked the power to "impose ad valorem property taxes," just as it lacked the power over the operation of schools. 451 U.S. at 366. Moreover, in the specific context of education, at least one lower court has emphasized the importance of the power to tax in determining whether a school-board election is subject to the "one person, one vote" doctrine. *See Pittman v. Chicago Bd. of Educ.*, 64 F.3d 1098, 1102-03 (7th Cir. 1995) (Posner, then-C.J.).

Here, although the Somerville Board does not formally have the power to tax Branchburg residents directly, it has the functional equivalent of that power in the form of the power to collect tuition payments from the Branchburg Board — payments that are, in turn, made out of property tax revenues collected by that board. *See* App. 12a. That power

is a substantial one: as we have noted, in the 2000-01 school year alone, the Somerville Board was projected to collect more than $4.8 million from the Branchburg Board. *See id.*

c. By failing to recognize that the "one person, one vote" doctrine is fully applicable where a governmental body subjects non-residents to "important aspects of state powers," the Third Circuit's decision in this case is in tension with this Court's prior decision in *Holt*. Had the Third Circuit applied strict scrutiny, it would surely have struck down the New Jersey scheme on the ground that it fails to provide adequate representation for Branchburg residents. *See Board of Estimate of City of New York v. Morris*, 489 U.S. 688, 693-94, 702 (1989) (stating that 78% deviation from equal representation was unacceptable); *Mahan v. Howell*, 410 U.S. 315, 329 (1973) (stating that a 16.4% deviation approaches "tolerable limits"). *Certiorari* is warranted in order to put to rest any ambiguity in this Court's decision in *Holt*. This Court should grant *certiorari* and hold that strict scrutiny is applicable to the New Jersey scheme.

B. The Question Presented Is A Recurring Question Of Exceptional Importance.

Certiorari is further warranted because the Third Circuit's decision in this case will have substantial practical and legal implications.

1. This case presents a question of great significance to the residents of New Jersey with respect to the constitutionality of New Jersey's unique "send-receive" scheme. At present, over 215 New Jersey school districts — more than a third of the districts in the State — are in send-receive relationships with other districts. *See* Matthew Brown, *Sending Schools May Get Bigger Voice In Education*, The Record (Hackensack, N.J.), Apr. 6, 2001, at A1; Department of Education —

Frequently Asked Questions, *at* http://www.state.nj.us/njded/genfo/faq.htm (last visited Mar. 2, 2003).

In many of those cases, the sending districts, like Branchburg, are unable to extricate themselves from their send-receive relationships. *See* App. 15a. As we have already noted, Branchburg residents have sought to terminate or alter their relationship with Somerville for more than three decades. *See id.* at 13a-15a. However, their efforts have been blocked at every turn, either by the State or by the Somerville Board. *See id.* In fact, the State of New Jersey has never approved the severance of a send-receive relationship where students from the sending district constitute more than 25% of the students in the receiving district's high schools — much less where, as here, they constitute a majority. *See* C.A. App. 85a.

Moreover, perhaps because receiving districts are typically larger than sending districts, efforts to amend the send-receive statute to provide sending districts more representation or to allow them more easily to quit their send-receive relationships have likewise failed. *See* Mathew J. Dowling, *School Board Pursues Battle*, Newark Star-Ledger, Dec. 12, 2002, at 23. Other sending districts have therefore sought to terminate their send-receive relationships in litigation, with at least one advancing constitutional claims similar to those at issue in this case. *See English v. Board of Educ. of Boonton*, 301 F.3d 69 (3d Cir. 2002), *cert. denied*, 123 S. Ct. 852 (2003).[2] Absent this Court's intervention, such litigation is likely to continue.

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2. Crucially, in *English*, unlike this case, the sending district had made no attempt to extricate itself from its send-receive relationship. In its decision in this case, the Third Circuit expressly relied on that pivotal fact. *See* 301 F.3d at 80. Because Branchburg

(Cont'd)

2. New Jersey's send-receive scheme implicates important rights: namely, the right of Branchburg residents in their capacity as parents to educate their children as they see fit, and the right of Branchburg residents in their capacity as voters to participate fully in the governance of their own affairs.

By placing important educational decisions in the hands of a school board that does not adequately represent them, the New Jersey send-receive statute denies the parents of Branchburg and other localities a meaningful opportunity to guide and control their children's education. As Justice Powell once noted, "[a]part from health, no subject is closer to the hearts of parents than their children's education." *Board of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 894 (1982) (dissenting opinion). Indeed, "[d]irect control over decisions vitally affecting the education of one's children is a need that is strongly felt in our society." *Wright v. Council of the City of Emporia*, 407 U.S. 451, 469 (1972). The Court has thought this right so valuable that it has recognized in parents a substantive due process right to direct and control their children's upbringing and education. *See, e.g., Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) (plurality opinion); *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). Perhaps because of the preeminent interest parents have in the education of their children, the "governance of elementary and secondary education traditionally has been placed in the hands of a local board responsible locally to the parents and citizens of school districts." *Pico*, 457 U.S. at 894 (Powell,

(Cont'd)
cannot terminate or alter its relationship with Somerville, this case presents a superior vehicle for consideration of the "one person, one vote" question than *English*.

J., dissenting). It is "[t]hrough participation in the election of school board members [that] parents influence, if not control, the direction of their children's education." *Id.* at 891 (Burger, C.J., dissenting).

The New Jersey send-receive statute also denies the parents of Branchburg and other localities the right to participate fully in the governance of their own affairs. The "one person, one vote" doctrine, of course, is grounded in the principle that every citizen's vote should be of equal weight. This Court has frequently noted that voting is "one of the most fundamental and cherished liberties in our democratic system of government," *Burson v. Freeman*, 504 U.S. 191, 214 (1992) (Kennedy, J., concurring), and that "each and every citizen has an inalienable right to full and effective participation in the political processes of the legislative bodies of the Nation, State, or locality" in which he lives, *Morris*, 489 U.S. at 693 (internal quotation omitted). As this Court famously noted in *Bush v. Gore*, 531 U.S. 98 (2000), an "arbitrary and disparate treatment" that grants one group "greater voting strength than another" violates core principles of equal protection, *id.* at 107.

Like the rights protected by the First Amendment, the rights implicated by the New Jersey send-receive system are so fundamental that this Court has routinely acted to protect them even absent a circuit split — particularly where, as here, the regulatory scheme being challenged is a unique one. The Court should do likewise here.

3. This case has implications not only for the New Jersey send-receive scheme, but also for a wide variety of state laws providing for some form of extraterritorial jurisdiction. In *Holt*, this Court noted that some 35 States authorize their

municipal subdivisions to exercise extraterritorial power over adjoining areas. *See* 439 U.S. at 72. The Court's decision in this case will clarify the circumstances, if any, under which the extraterritorial exercise of authority by a governmental body violates the "one person, one vote" principle.

"As long as [the Court] sustain[s] the one-person, one-vote principle, [it] ha[s] an obligation to explain to States and localities what it actually means." *Chen v. City of Houston*, 532 U.S. 1046, 1048 (2001) (Thomas, J., dissenting from denial of certiorari). This Court's decision in *Holt* has spawned uncertainty not only in the lower courts,[3] but also among commentators.[4] This case presents an ideal vehicle to address the applicability of the "one person, one vote" principle to the exercise of extraterritorial power by one of the most important types of governmental entities in our Nation — the entities in charge of our children's education.

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3. *Compare* App. 20a (stating that "one person, one vote" principle applies in extraterritorial situations when a governmental body "exercises a level of control over the non-residents' lives close to or equal to that which it exercises over those who actually reside within its borders") (internal quotation omitted), *with Mixon v. Ohio*, 193 F.3d 389, 405 (6th Cir. 1999) (stating that "one person, one vote" principle never applies).

4. *Compare* Richard Briffault, *Our Localism: Part I — The Structure of Local Government Law*, 90 Colum. L. Rev. 1, 91 n.380 (1990) (suggesting that "one person, one vote" principles applies when non-residents are subject to the "hallmarks" of local governmental power), *with* Glenn P. Smith, Note, *Interest Exceptions to One-Resident, One Vote: Better Results from the Voting Rights Act?*, 74 Tex. L. Rev. 1153, 1169-70 (1996) (stating that "one person, one vote" principle never applies), *and* Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 Harv. L. Rev. 1841, 1866 (1994) (same).

CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of *certiorari*.

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